



July 11, 2001

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2001-2980

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149365.

The Mesquite Police Department (the "department") received a request for "all public records and police reports" relating to a fatal shooting. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

You inform this office that some of the submitted information was the subject of Open Records Letter No. 2001-1639 (2001). You further inform us, however, that the facts and circumstances on which the prior ruling was based have changed since its issuance. Accordingly, Open Records Letter No. 2001-1639 (2001) does not constitute a previous determination under section 552.301(a) of the Government Code with respect to any of the information that you submitted in requesting this attorney general decision. *See* Open Records Decision No. 673 at 6-7 (2001) (explaining that attorney general decision constitutes previous determination under Gov't Code § 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must

reasonably explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(a)(2) excepts from disclosure information that relates to a concluded investigation or prosecution that did not result in a conviction or a deferred adjudication. See Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). You state that the requested information pertains to a criminal matter that "concluded with a finding of no wrongdoing by the MPD officer who did the shooting as a result of the Grand Jury's 'no bill.'" Based on this representation and our review of the requested information, we conclude that most of the information is excepted from disclosure under section 552.108(a)(2).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Section 552.108(c) requires the release of basic front-page offense and arrest report information, including a detailed description of the alleged offense, even if that information is not literally located on the front page of a police report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the requested information under section 552.108(a)(2). As we are able to make this determination, we need not address your arguments under sections 552.101, 552.103, 552.111, or 552.130.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>1</sup>We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

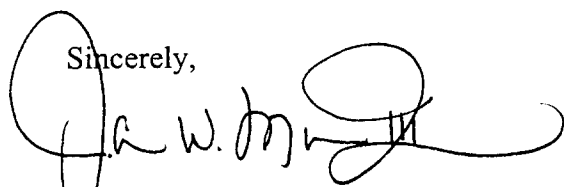
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "J.W. Morris, III", with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 149365

Enc. Submitted documents

c: Ms. Holly Becka  
*The Dallas Morning News*  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)